

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

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II. BACKGROUND

DISPATCHED BY PR Docket No. 92-209

In the Matter of

Amendment of Part 90
of the Commission's Rules
to Expand Coordination of
the 800 MHz General
Category Channels.

RM-7965

REPORT AND ORDER

Adopted: May 11, 1993;

Released: May 24, 1993

By the Commission:

I. INTRODUCTION

1. This *Report and Order* amends Part 90 of our Rules to provide Specialized Mobile Radio (SMR)¹ applicants for conventional systems² on General Category frequencies³ the option of seeking frequency coordination from any of the three frequency coordinators certified to recommend 800 MHz frequencies. These coordinators are the Industrial Telecommunications Association, Inc. (ITA),⁴ the National Association of Business and Educational Radio, Inc. (NABER), and the Associated Public-Safety Communications Officers (APCO).⁵

2. *Current Rule.* SMR applicants for conventional systems in the General Category must obtain coordination from NABER.⁶ SMR applicants requesting General Category channels for expansion or consolidation of trunked operations may, in contrast, seek frequency coordination from any of the three certified frequency coordinators.⁷

3. *Notice of Proposed Rule Making.* On September 9, 1992 we adopted a *Notice of Proposed Rule Making (Notice)*⁸ that proposed to make consistent coordination procedures between conventional and trunked SMR systems licensed on General Category channels. We tentatively concluded that no apparent justification existed for different coordination procedures, and no apparent benefit accrued from this disparate treatment of SMR applicants based on the operational mode the system used or proposed.⁹ The *Notice* indicated our concern that SMR applicants requesting General Category channels for conventional operations may be at a competitive disadvantage to applicants seeking these same channels for expansion or consolidation of trunked SMR systems because the SMR applicant for a conventional system does not have the ability to choose the coordination service that best meets its requirements.¹⁰ As NABER, APCO and ITA all currently maintain complete up-to-date data bases for General Category channels, we noted a lack of apparent benefit resulting from this differential treatment of SMR applicants.¹¹ Six comments and three reply comments were filed in response to the *Notice*.¹²

III. DISCUSSION

4. *Comments.* With the exception of APCO, which took no position,¹³ commenters generally support the proposal to provide SMR applicants for conventional systems licensed on General Category frequencies the option of seeking frequency coordination from any of the three recognized coordinators.¹⁴ They submit that members of the public should enjoy maximum flexibility in the selection of desired services.¹⁵ Commenters contend that if all

¹ SMR licensees offer communications services on a commercial basis to private radio eligibles. See Second Report and Order in Docket No. 18262, 46 FCC 2d 752 (1974)(subsequent history omitted).

² Conventional systems are authorized in all private land mobile frequency bands. However, trunked systems are currently authorized only at 220 MHz and on frequencies above 800 MHz. Whereas a conventional system user manually selects the channel on which to transmit, a trunked system user is automatically routed by a computer to the first available channel. See Report and Order in PR Docket No. 87-213, 5 FCC Rcd 4016, 4017 (1990).

³ Prior to 1990, these 150 conventional 800 MHz frequencies were set aside exclusively for conventional use. However, in 1990, these channels were made available to all eligible users for either conventional or trunked use as "General Category" channels. *Id.* at 4018.

⁴ ITA was formerly known as the Special Industrial Radio Service Association, Inc. (SIRSA).

⁵ In 1983, we recognized NABER as the sole coordinator for SMR systems on these 150 conventional channels. See Public Notice, Designation of Frequency Coordinator for 150 Original 800 MHz Conventional Channels, Mimeo No. 3950, May 3, 1983. Three years later, in 1986, while establishing new frequency coordination procedures, we certified ITA, NABER, and APCO as the frequency coordinators for the 150 conventional 800 MHz

frequencies. Applicants seeking the 150 conventional 800 MHz channels for non-SMR systems must obtain coordination from the frequency coordinator representing the category in which they establish eligibility. See Report and Order in PR Docket No. 83-737, 103 FCC 2d 1093, 1146-1147 (1986).

⁶ This procedure was summarily indicated in the proceeding permitting the 150 channels to be used for trunking operations. See Report and Order in PR Docket No. 87-213, 5 FCC Rcd at 4023 and note 75.

⁷ *Id.* at 4023.

⁸ Notice of Proposed Rule Making, PR Docket No. 92-209, 7 FCC Rcd 6470 (1992).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² The *Notice* established November 27, 1992, and December 14, 1992, as the filing dates for comments and replies, respectively. See Appendix B for a list of parties filing comments and replies.

¹³ See APCO Comments at 2.

¹⁴ See ITA Comments at 5, Council of Independent Communication Suppliers (CICS) Comments at 4, American Mobile Telecommunications Association, Inc. (AMTA) Comments at 2, and Radio Communication Associates Comments (RCAC) at 1. See also Fleet Call, Inc. (Fleet Call) Reply Comments at 3.

¹⁵ See, e.g., CICS Comments at 2.

three certified 800 MHz coordinators are permitted to coordinate applications for conventional SMR stations, there will be greater incentive for the individual coordinators to ensure that applicants receive a superior product.¹⁶

5. Commenting parties further assert that marketplace considerations aside, there are practical reasons warranting the provision of options in seeking coordination services. For instance, there may be some disparity among the three coordinators in the time required for coordinating applications.¹⁷ This disparity can result from a number of factors, such as pending workload, availability of staff resources, and routine fluctuations relating to the flow of applications.¹⁸ Commenters also note their desire to choose a particular coordinator because of a valued relationship already developed.¹⁹

6. AMTA also indicates concern that because General Category coordinations can involve several coordinators simultaneously recommending the same channel, an applicant remains unsure of whether a grant will result.²⁰ Several commenters concede that all we presently require is that coordinators be notified of a frequency recommendation.²¹ AMTA and NABER, however, find notification inadequate.²² Instead, these parties want us to require that all three coordinators concur in the frequency recommendation before the application is filed with the Commission.²³ ITA opposes the adoption of concurrence procedures as beyond the scope of this rule making proceeding.²⁴ It further argues that implementing a concurrence requirement would subject the coordination process to delays and would negate the natural incentives which stem from a competitive environment.²⁵

7. *Discussion.* The record in this proceeding supports permitting SMR applicants for conventional systems using General Category frequencies the option of seeking frequency coordination from any of the three recognized frequency coordinators. Commenters generally are in

agreement that our proposal would be beneficial because it would remove the competitive disadvantage currently imposed on SMR applicants for conventional facilities. After implementation of our proposal, all SMR applicants for systems, trunked and conventional, on General Category channels will have the advantage of being able to choose a frequency coordinator on the basis of criteria such as cost and speed of service.

8. Only NABER indicates any concerns regarding our proposal. In particular, NABER submits that adoption of our proposal would be, in effect, a rejection of the requirement that certified frequency coordinators be representative of the users they serve.²⁶ ²⁷ We find no merit in this contention. Our proposal to provide SMR applicants for conventional systems on General Category frequencies the option of seeking frequency coordination from any of the three recognized coordinators is not a rejection of the representativeness standard for certification of coordinators. Upon selection of frequency coordinators for various radio services in 1986,²⁸ we specifically declined to certify a coordinator for the SMR category because, at that time, our policies with regard to this relatively new industry were still evolving,²⁹ and the Commission believed that no single entity was representative of all applicants for SMR licenses.³⁰ Therefore, because there is no entity representative of SMR applicants for conventional systems, NABER's argument that we are rejecting the "representativeness" standard for this radio category has no justification.

9. In 1990, in making the 150 channels available for the first time to eligibles for trunked use as "General Category" channels, we permitted applicants seeking to use conventional General Category frequencies for expansion or consolidation of trunked SMR systems to choose any of the three recognized coordinators for coordination services.³¹ At that time, without any discussion, we indicated that SMR applicants for conventional systems in the General

¹⁶ See, e.g., ITA Comments at 4.

¹⁷ See, e.g., AMTA Comments at 3, and ITA Comments at 5.

¹⁸ See, e.g., CICS Comments at 4.

¹⁹ See, e.g., CICS Comments at 4.

²⁰ See AMTA Comments at 5-6.

²¹ See, e.g., ITA Reply Comments at 7.

²² See AMTA Comments at 8, and NABER Reply Comments at 3.

²³ See AMTA Comments at 8, and NABER Reply Comments at 2. AMTA asserts that the coordinators no longer obtain concurrence from each other for General Category frequency recommendations as they did for over a decade, but now simply notify one another of their recommendations some undetermined time after the action has taken place. See AMTA Comments at 6. AMTA further submits that if the Commission does not wish to mandate concurrence procedures, applicants should be permitted to request General Category frequencies based on an independent frequency analysis directly from the Commission rather than requiring coordination through the recognized organizations. See AMTA Comments at 8. However, ITA opposes permitting applicants to perform their own data base search and to file applications directly with the Commission because it would introduce greater uncertainty, as well as a large degree of chaos, into the coordination process. See ITA Reply Comments at 7-8.

²⁴ See ITA Reply Comments at 6.

²⁵ See ITA Reply Comments at 7.

²⁶ See NABER Reply Comments at 5. See also Communications Technical Amendments Act of 1982, Report No. 97-765, 97th Congress 2d Sess., Sec. 20, p. 47, where Congress directed the Commission to recognize only representative frequency ad-

visory committees before permitting non-representative committees to issue frequency coordinations.

²⁷ NABER would support our proposal if it were to permit *any* applicant (i.e., Business, Industrial/Land Transportation, Public Safety and SMRS) for General Category channels to have the option of obtaining coordination from any of the three certified frequency coordinators (APCO, NABER, or ITA). See NABER Comments at 3-4. NABER submits that the Commission cannot logically extend its argument to expand coordination options for SMR applicants for conventional systems without a similar extension to *all* applicants for General Category channels regardless of service eligibility. See NABER Comments at 5. We agree with Fleet Call and ITA that NABER's proposal is outside the scope of this proceeding because the matter was not raised for comment in the *Notice*. See Fleet Call Reply Comments at 4, and ITA Reply Comments at 3. See also 5 U.S.C. § 553(b)(3) in which the Administrative Procedure Act requires that general notice of proposed rule making include either the terms or substance of the proposed rule or a description of the subjects and issues involved. The matter of providing expanded coordination options to all applicants for General Category channels may be pursued through a Petition for Rule Making by any interested party.

²⁸ See note 5, *supra*.

²⁹ See Report and Order in PR Docket No. 83-737, 103 FCC 2d at 1144.

³⁰ Given the diverse nature of SMR licensees and end users, we remain convinced that no single frequency coordinator can be deemed the exclusive representative of the SMR category.

³¹ See Report and Order in PR Docket No. 87-213, 5 FCC Red at 4023.

Category should continue to obtain coordination from NABER, as they had been doing since 1983.³² This disparity in treatment of SMR applicants for trunked and conventional use of these General Category channels is unjustified and warrants remediation. Therefore, we will permit all applicants for SMR systems on these frequencies the option of seeking frequency coordination from any of the three recognized coordinators.

10. In regard to AMTA's proposal that we require the three coordinators to adopt concurrence procedures,³³ we conclude that our current requirement that coordinators on a timely basis notify each other upon recommending a General Category channel is satisfactory.³⁴ This notification procedure provides coordinators with the information that is necessary to enable them to fulfill their frequency recommendation obligations. As we stated in the *Notice*, in instances where we permit multiple coordinators to provide frequency recommendations for the same frequencies, we intend to continue our current practice of giving priority to the application first filed with the Private Radio Bureau's Licensing Division.³⁵ We do not, however, believe the public interest would be served through our micro-management of the coordination process. Coordinators are, of course, free to implement any notification procedures they deem necessary to achieve effective, efficient frequency recommendations.³⁶

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

11. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

Need and Purpose of the Action

12. By permitting applicants for conventional SMR systems in the General Category to choose from any of the three certified coordinators for this group of channels, the Commission will conform our regulatory treatment of conventional SMR applicants seeking a recommendation for an 800 MHz General Category frequency to that currently afforded trunked applicants also seeking a recommendation of General Category frequencies.

Issues Raised in Response to the Initial Regulatory Flexibility Analysis

13. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered and Rejected

14. All significant alternatives have been addressed in this Report and Order.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r) and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 332(a), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in the Appendix below, effective [thirty days after publication in the Federal Register].

16. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

17. For further information concerning this *Report and Order*, contact Freda Lippert Thyden, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7125.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Donna R. Searcy
Secretary

APPENDIX A

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amend as follows:

Part 90 - Private land mobile radio services

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Section 90.615 is amended by adding a new last sentence to paragraph (a) to read as follows:

§ 90.615 Frequencies available in the General Category.

(a) * * * Applications submitted by eligibles under § 90.603(c) must be coordinated (see § 90.175) by any one of the frequency coordinators certified to coordinate applications above 800 MHz.

* * * * *

³² See note 5, *supra*.

³³ NABER supports AMTA's proposal to require specific concurrence procedures. See NABER Reply Comments at 5. Such procedures have never been required of coordinators. See Report and Order in PR Docket No. 83-737, 103 FCC 2d at 1111-1112 (1986).

³⁴ At the time we permitted trunking on the General Category channels, we indicated that procedures were already in place for

notification among the three 800 MHz coordinators when a frequency recommendation is made by one of them. See Report and Order in PR Docket No. 87-213, 5 FCC Rcd at 4022.

³⁵ See *Notice* at 6470 and n.8. See also 47 C.F.R. § 0.481.

³⁶ Moreover, as we did not propose in the *Notice* to modify the notification procedure, this matter is beyond the scope of this rule making proceeding.

APPENDIX B

List of Parties Filing Comments

American Mobile Telecommunications Association,
Inc.

Associated Public-Safety Communications Officers,
Inc.

Council of Independent Communication Suppliers

Industrial Telecommunications Association, Inc.

National Association of Business and Educational Ra-
dio, Inc.

Radio Communication Associates

List of Parties Filing Reply Comments

Fleet Call, Inc.

Industrial Telecommunications Association, Inc.

National Association of Business and Educational Ra-
dio, Inc.